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Divorce - Property Settlement Agreement - Alimony or Judgment Debt Regarding Imprisonment for Contempt

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as an information in a criminal proceeding for a reckless driving charge because statutory procedure had not been followed. The court further indicated that such a ticket would not even suffice as a summons.¹⁰

No doubt the volume of motor vehicle violations necessitates expeditious disposition of offenders, but it is submitted that such a situation does not justify circumvention of the rights of the accused by eliminating the established statutory procedure. There is possibly a present need to amend the existing statutory procedure, but until the legislature enacts such statutes the courts are under a duty to administer the procedure that has been adopted and is currently in force.

DENNIS M. SOBOLIK.

DIVORCE — PROPERTY SETTLEMENT AGREEMENT — ALIMONY OR JUDGMENT DEBT REGARDING IMPRISONMENT FOR CONTEMPT. — Parties contemplating a divorce entered into a property settlement agreement which was adopted and made part of the divorce decree. The husband's failure to abide by the agreement led to a contempt proceeding. The Supreme Court of California, one justice dissenting, held that the payments due under the agreement constituted an adjustment of property interests, rather than alimony, support, or maintenance,¹ and therefore was a "debt" within the constitutional prohibition against imprisonment for debt.² *Bradley v. Superior Court of California*, 48 Cal. 2d____, 310 P.2d 634 (1957).

Contempt proceedings for failure to comply with a court order, brought about through property settlements which have been crystallized in the divorce decree, have led to many irreconcilable conflicts.³ The determinative factor is whether the agreement is a substitute for alimony or support,⁴ or is merely in the nature of a settlement or division of the property rights of the parties.

The more generally prevailing view is that decrees requiring compliance with a property settlement agreement are not alimony and therefore not enforceable by contempt proceedings.⁵ The proponents of this view believe that

of the N. D. Const. which provides that all prosecutions in police magistrates and justice of the peace courts shall proceed by way of information. Compare, § 29-0101 of the N. D. Rev. Code of 1943 which states that every public offense must be prosecuted by information or indictment unless it is one in which trial may be had in justice, police, or county court.

10. *State v. Trygg*, (Dist. Ct., 4th Jud. Dist., N. D. 1957). The court stated that "when a document, such as this one is, bears a semblance of a legal document and purports to be issued pursuant to law . . . even though such document may not be actually a legally sufficient document, it is a simulation of a legal document which would be sufficient to the ordinary citizen to indicate that his attendance had been legally required".

1. *Ex parte Stephensen*, 252 Ala. 316, 40 So. 2d 716 (1949); *Application of Martin*, 76 Idaho 199, 279 P.2d 873 (1955); *Clubb v. Clubb*, 334 Ill. App. 599, 80 N.E.2d 94 (1948); *Wojahn v. Halter*, 229 Minn. 374, 39 N.W.2d 545 (1949) (It is generally agreed that alimony and child support payments do not constitute a debt within the constitutional prohibition against imprisonment for debt).

2. Calif. Const., art I, § 15.

3. 2 Nelson, *Divorce and Annulment*, (2d ed. 1945) § 16.08.

4. *Lyon v. Lyon*, 21 Conn. 184 (1851); *State ex rel Cook v. Cook*, 66 Ohio St. 566, 64 N.E. 567 (1902); *West v. West*, 126 Va. 696, 101 S.E. 876 (1920) (Takes view that alimony is itself an adjustment of property rights).

5. *Buchman v. Buchman*, 157 Md. 166, 145 Atl. 488 (1929); *Frohnape v. Frohnape*, 309 Mich. 215, 15 N.W.2d 137 (1944); *Goldfish v. Goldfish*, 184 N.Y.Supp. 512, 193 App.Div. 686 (1st Dept. 1920) *Aff'd* 230 N.Y. 607, 130 N.E. 912 (1921). *But see* *Edmundson v. Edmundson*, 222 N.C. 181, 22 S.E.2d 576 (1942).

where spouses bargain with each other and agree that terms of their contract shall thereafter define their rights and obligations *inter se*, then it is to the contract alone (and to conventional civil proceedings for enforcement of contract rights) that they must look for a remedy in the event of a breach. While inclusion of such a contract in the decree of divorce may furnish a basis for subsequent proceedings leading to issuance of a writ of execution, it cannot support commitment for failure to pay a judgment debt.⁶

The minority view takes the position that the problem here presented is not enforcement of an agreement by contempt proceedings, but is rather the enforcement by contempt proceedings of a decree which has incorporated therein an agreement. The decree which incorporates an agreement is a decree of court and the agreement is superseded by that decree.⁷ The obligations thus imposed are not those imposed by contract, *but by decree*,⁸ and are enforceable as such.⁹

It is submitted that the lawyer attempting to do justice by his client is presently placed in a confused and bewildered position. What clear cut and determinative advice can be given to a client when the law is such that lawyers and judges alike have extreme difficulty in unraveling situations as that which is presented in the instant case. If incorporation of the agreement into a court decree has no practical effect it should be omitted and subsequently silence confusion and unnecessary litigation.

W. T. DILLENBERG.

EXTRADITION — INTERSTATE EXTRADITION — EXTRADITION OF NON-FUGITIVES. — Plaintiff in error was charged in Nebraska with the crime of non-support of his wife and children. Nebraska demanded extradition under the federal law. The District Court of Colorado denied the petition for a writ of habeas corpus after the plaintiff in error had been taken into custody pursuant to the extradition request. The Supreme Court, one justice dissenting, *held* that, since petitioner never lived in Nebraska and his wife left him and took their children to that state, he was not subject to extradition by Nebraska as a fugitive and was entitled to a writ of habeas corpus discharging him from custody. *Matthews v. People*, 314 P.2d 906 (Colo. 1957).

Extradition¹ has been established in the several states by the Constitution² and the laws of the United States.³ The Federal Constitution and implement-

6. *Bradley v. Superior Court*, 48 Cal.2d, 310 P.2d 634 (1957); *Dickey v. Dickey*, 154 Md. 675, 141 Atl. 387 (1928); *Merritt v. Merritt*, 237 N.C. 271, 74 S.E.2d 529 (1953); *Stull v. Stull*, 126 Pa. 255, 191 Atl. 187 (1937).

7. *Estes v. Estes*, 192 Ga. 94, 14 S.E.2d 681 (1941); *Holloway v. Holloway*, 130 Ohio 214, 198 N.E. 579 (1935).

8. *Compare Lazar v. Superior Court*, 16 Cal. 2d 617, 107 P.2d 249 (1940), *with Solomon v. Solomon*, 149 Fla. 174, 5 So. 2d 265 (1941) (If merely ratified but not made part of decree, the husband then is not responsible in contempt proceedings).

9. *Clubb v. Clubb*, 334 Ill.App. 599, 80 N.E.2d 94 (1948).

1. Extradition is defined in Black's Law Dictionary (4th ed. 1951). "The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which being competent to try and punish him, demands the surrender."

2. U. S. Const. art. IV, § 2, cl. 2. "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

3. 18 U.S.C. § 3182 (1952).